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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN ANTHONY PADILLA,

Defendant and Appellant.

F041995

(Super. Ct. No. BF099913B)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Stephen P. Gildner, Judge.

Elizabeth Campbell, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Stephen G. Herndon and Michael Dolida, Deputy Attorneys General, for Plaintiff and Respondent.

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Ryan Padilla pled no contest to one count of being an accessory after the fact (Pen. Code § 32)<sup>1</sup> to an assault with a deadly weapon on William Moore by codefendant Kyle McGuirre (§ 245, subd. (a)(1)).

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\* Before Dibiaso, Acting P.J., Buckley, J., and Levy, J.

<sup>1</sup> Further statutory references are to the Penal Code unless otherwise indicated.

The court suspended imposition of the sentence and placed Padilla on probation for a period of five years. As a condition of probation, the court ordered Padilla to serve one year in county jail with credit for time served. The court ordered Padilla to pay \$313 for the costs of the probation report, \$32 per month for the costs of supervision, and a \$200 restitution fine (§ 1202.4, subd. (b)). Finally, the court ordered Padilla to pay restitution to Moore in an amount to be determined by the probation department and restitution to the Victim's Restitution Fund for reimbursement of any payments made to Moore (§ 1202.4, subd. (f)).

Padilla contends that the court's order that he pay restitution to Moore was improper, since Moore's loss was not a result of his conduct.

### **FACTS**

Padilla told codefendant McGuirre that Padilla's cousin was being chased by people with guns. Padilla drove McGuirre to a park knowing that McGuirre was armed with a handgun and that a fight was going to occur. McGuirre fired the gun at a group of people at the park, and Padilla and McGuirre fled the park. Padilla drove McGuirre to the house of McGuirre's girlfriend and saw McGuirre take the gun inside. The victim, William Moore, suffered a gunshot wound to the face that resulted in the loss of several teeth and a portion of his tongue.

### **DISCUSSION**

Padilla contends the court erred when it ordered him to pay restitution to the victim for injuries caused by the assault. He argues that the victim's injuries were not caused by his driving McGuirre away from the scene of the shooting. Thus, the restitution order should be stricken. We disagree.

#### ***Harvey Analysis***

In the original complaint, appellant was charged with attempted murder on William Moore (count 1; §§ 187, subd. (a)/664). As part of the plea bargain, count 1 was dismissed. Appellant now argues that, because of this plea agreement and the lack of a

*Harvey* waiver, the court must consider appellant's criminal conduct as being limited to driving the codefendant away from the scene of the shooting. Appellant misapprehends the scope of the holding in *Harvey*.

Absent a contrary agreement, a sentencing court may not consider facts "underlying and solely pertaining to" a count that has been dismissed as part of a plea bargain. (*People v. Harvey* (1979) 25 Cal.3d 754, 758.) However, the sentencing court may still take into account facts underlying dismissed charges that are transactionally related to the offense to which the defendant pled guilty. (*People v. Sturiale* (2000) 82 Cal.App.4th 1308, 1315; *People v. Harvey, supra*, 25 Cal.3d at p. 758.)

Here, Padilla told McGuirre that his cousin was being chased by people with guns, he drove McGuirre to the park knowing that McGuirre was armed, and, after the shooting, fled with McGuirre without doing anything to help the victim.

This is not a situation in which the trial court considered, without warning, entirely unrelated charges in determining a sentence, as in *Harvey*. Before accepting Padilla's plea, the trial court warned Padilla that he would be facing a fine of \$200 to \$10,000 and would be required to pay restitution to the victim for any injury or loss. Padilla's actions as an accessory were a part of one continuous transaction that took place before, during, and after the shooting. Therefore, *Harvey* is not applicable, and the sentencing court properly considered all of Padilla's actions in determining whether he would be required to pay restitution.

### ***The Restitution Order***

The sentencing court ordered Padilla to pay restitution to the victim pursuant to section 1202.4, subdivision (f). Section 1202.4 subdivision (f) provides,

"In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any

other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.”

A court’s restitution order must be sustained unless it rests upon a demonstrable error of law or constitutes an abuse of discretion. (*In re S.S.* (1995) 37 Cal.App.4th 543, 550.) A victim’s right to restitution is to be broadly and liberally construed. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) When there is a factual and rational basis for the amount of restitution ordered by the trial court, the reviewing court will find no abuse of discretion. (*Ibid.*) The test of whether restitution is proper is whether the loss was, “a ‘determined economic loss incurred as a result of the defendant’s criminal conduct.’ ” (*People v. Pinedo* (1998) 60 Cal.App.4th 1403, 1405-1406.)

Restitution has long been considered a valid condition of probation even when the loss was not necessarily caused by the criminal conduct underlying the conviction. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) Under certain circumstances, restitution has been found proper where the loss was caused by related conduct not resulting in a conviction, by conduct underlying dismissed and uncharged counts, and by conduct resulting in an acquittal. (*Ibid.*)

In *Carbajal*, the defendant was convicted of leaving the scene of an accident (Veh. Code § 20002, subd. (a)). The California Supreme Court upheld, as a condition of probation, a requirement of restitution to the owner of the car damaged in the accident. The court reasoned that the restitution was reasonably related (1) to the crime of leaving the scene of an accident, since that crime imposes on the nonfleeing driver the additional costs of locating the fleeing driver and, in some cases, the entire cost of the accident, and (2) to the goal of deterring future criminality by forcing the defendant to accept the responsibility he attempted to evade by leaving the scene of the accident. (*People v. Carbajal, supra*, 10 Cal.4th at pp. 1123-1124.)

Here, Padilla drove McGuirre to the park knowing McGuirre was armed and that a fight was likely to occur. Padilla's actions facilitated the circumstances that led to Moore's loss. Moreover, in helping to conceal McGuirre's actions, Padilla helped to prevent the People, and Moore, from learning who occasioned his loss, thereby potentially delaying or preventing any recovery by Moore from that person. Therefore, it cannot be said that Moore's loss was not incurred as a result of Padilla's conduct, or that the restitution order had no relationship to Padilla's offense. The restitution order was proper.

#### **DISPOSITION**

The judgment is affirmed.